

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

GREAT AMERICAN INSURANCE
COMPANY,

Plaintiff

vs.

TERESA SEARS-McCALL; and
NICOLE HUXLEY,

Defendants

No. CIV-16-816-C

MEMORANDUM OPINION AND ORDER

On November 16, 2016, Plaintiff filed its Motion for Default Judgment (Dkt. No. 9). Therein, Plaintiff asserts that despite valid service on Defendants, no answer or other responsive pleading has been filed. The Court file contains documents demonstrating Defendant Huxley was served by certified mail on July 22, 2016 and Defendant Sears-McCall was personally served on September 17, 2016. Defendants' answers or other responsive pleadings are long past due. See Fed. R. Civ. P. 12(a). As of the date of this Order, no Defendant has filed any document. Finally, the Court has waited more than 21 days since the filing of the present motion, and no Defendant has responded. Accordingly, the Court finds Defendants are in default.

Plaintiff seeks entry of a default judgment pursuant to Fed. R. Civ. P. 55(b)(1). Specifically, Plaintiff seeks a declaratory judgment that it owes nothing under Occupational Accident Insurance Policy OA3942378-03. The Court has reviewed the facts outlined in

Plaintiff's Motion for Default as well as considered the well pleaded-facts set forth in the Complaint. Based on that review, the Court finds the policy did not provide coverage for Mr. Theo McCall's death for the reasons set forth by Plaintiff.

Plaintiff requests the Court award it attorneys' fees and costs. However, Plaintiff offers no authority to support an award of fees. Further, Plaintiff offers no argument or evidence demonstrating this matter could not have been resolved without pursuing a declaratory judgment. For these reasons, Plaintiff's request for attorneys' fees is denied. Plaintiff's request for costs will be considered upon a request filed in accordance with the Fed. R. Civ. P. 54(d) and LCvR54.1.

As set forth more fully herein, Plaintiff's Motion for Default Judgment (Dkt. No. 9) is GRANTED in part. Declaratory Judgment will be entered in favor of Plaintiff determining no coverage exists under Occupational Accident Insurance Policy OA3942378-03. A separate judgment will issue.

IT IS SO ORDERED this 12th day of December, 2016.


ROBIN J. CAUTHRON
United States District Judge